

AN ACT

relating to the licensing and regulation of behavior analysts and assistant behavior analysts; requiring an occupational license; imposing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.2031(a), Occupations Code, is amended to read as follows:

(a) This section applies only to the regulation of the following professions by the department:

- (1) athletic trainers;
- (2) behavior analysts;
- (3) dietitians;
- (4) [~~(3)~~] hearing instrument fitters and dispensers;
- (5) [~~(4)~~] midwives;
- (6) [~~(5)~~] orthotists and prosthetists; and
- (7) [~~(6)~~] speech-language pathologists and

audiologists.

SECTION 2. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows:

CHAPTER 506. BEHAVIOR ANALYSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Behavior Analyst Licensing Act.

Sec. 506.002. DEFINITIONS. In this chapter:

1 (1) "Advisory board" means the Behavior Analyst
2 Advisory Board.

3 (2) "Certifying entity" means the nationally
4 accredited Behavior Analyst Certification Board or another entity
5 that is accredited by the National Commission for Certifying
6 Agencies or the American National Standards Institute to issue
7 credentials in the professional practice of applied behavior
8 analysis and approved by the department.

9 (3) "Commission" means the Texas Commission of
10 Licensing and Regulation.

11 (4) "Department" means the Texas Department of
12 Licensing and Regulation.

13 (5) "Executive director" means the executive director
14 of the department.

15 (6) "License holder" means a person licensed under
16 this chapter.

17 (7) "Licensed assistant behavior analyst" means a
18 person who is certified by the certifying entity as a Board
19 Certified Assistant Behavior Analyst or who has an equivalent
20 certification issued by the certifying entity and who meets the
21 requirements specified by Sections 506.252 and 506.254.

22 (8) "Licensed behavior analyst" means a person who is
23 certified by the certifying entity as a Board Certified Behavior
24 Analyst or a Board Certified Behavior Analyst--Doctoral or who has
25 an equivalent certification issued by the certifying entity and who
26 meets the requirements specified by Sections 506.252 and 506.253.

27 (9) "Physician" means a person licensed to practice

1 medicine by the Texas Medical Board.

2 Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS.

3 (a) The practice of applied behavior analysis is the design,
4 implementation, and evaluation of instructional and environmental
5 modifications to produce socially significant improvements in
6 human behavior.

7 (b) The practice of applied behavior analysis includes the
8 empirical identification of functional relations between behavior
9 and environmental factors, known as functional assessment or
10 functional analysis.

11 (c) Applied behavior analysis interventions:

12 (1) are based on scientific research and the direct
13 observation and measurement of behavior and environment; and

14 (2) use contextual factors, motivating operations,
15 antecedent stimuli, positive reinforcement, and other procedures
16 to help individuals develop new behaviors, increase or decrease
17 existing behaviors, and elicit or evoke behaviors under specific
18 environmental conditions.

19 (d) The practice of applied behavior analysis does not
20 include:

21 (1) psychological testing, psychotherapy, cognitive
22 therapy, psychoanalysis, hypnotherapy, or counseling as treatment
23 modalities; or

24 (2) the diagnosis of disorders.

25 SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

26 Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does
27 not apply to a person licensed to practice psychology in this state

1 if the applied behavior analysis services provided are within the
2 scope of the licensed psychologist's education, training, and
3 competence.

4 Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter
5 does not apply to a person licensed to practice another profession
6 in this state if the applied behavior analysis services provided
7 are within:

8 (1) the scope of practice of the person's license under
9 state law; and

10 (2) the scope of the person's education, training, and
11 competence.

12 Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter
13 does not apply to a family member or guardian of a recipient of
14 applied behavior analysis services who is implementing a behavior
15 analysis treatment plan for the recipient under the extended
16 authority and direction of a licensed behavior analyst or licensed
17 assistant behavior analyst.

18 Sec. 506.054. PARAPROFESSIONALS. This chapter does not
19 apply to a paraprofessional technician who delivers applied
20 behavior analysis services if:

21 (1) the applied behavior analysis services are
22 provided under the extended authority and direction of a licensed
23 behavior analyst or licensed assistant behavior analyst; and

24 (2) the person is designated as an "applied behavior
25 analysis technician," "behavior technician," "tutor," or
26 "front-line therapist."

27 Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter

1 does not apply to an applied behavior analysis activity or service
2 of a college or university student, intern, or fellow if:

3 (1) the activity or service is part of a defined
4 behavior analysis program of study, course, practicum, internship,
5 or postdoctoral fellowship;

6 (2) the activity or service is directly supervised by
7 a licensed behavior analyst or an instructor in a course sequence
8 approved by the certifying entity; and

9 (3) the person is designated as a "student," "intern,"
10 "fellow," or "trainee."

11 Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does not
12 apply to an unlicensed person pursuing supervised experience in
13 applied behavior analysis if the supervised experience is
14 consistent with the requirements of the certifying entity and
15 commission rules.

16 Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM
17 ANOTHER STATE. (a) This chapter does not apply to a behavior
18 analyst licensed in another jurisdiction or certified by the
19 certifying entity if the activities and services conducted in this
20 state:

21 (1) are within the behavior analyst's customary area
22 of practice;

23 (2) are conducted not more than 20 days in a calendar
24 year; and

25 (3) are not otherwise in violation of this chapter.

26 (b) A behavior analyst described by Subsection (a) shall
27 inform the recipient of applied behavior analysis services, or a

1 parent or guardian of the recipient if the recipient is under 18
2 years of age, that:

3 (1) the behavior analyst is not licensed in this
4 state; and

5 (2) the activities and services provided by the
6 behavior analyst are time-limited.

7 Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT.

8 (a) This chapter does not apply to a teacher or employee of a
9 private or public school who provides applied behavior analysis
10 services if the teacher or employee is performing duties within the
11 scope of the teacher's or employee's employment.

12 (b) A person described by Subsection (a) may not:

13 (1) represent that the person is a behavior analyst,
14 unless the applied behavior analysis services provided are within
15 the person's education, training, and competence;

16 (2) offer applied behavior analysis services to any
17 person, other than within the scope of the person's employment
18 duties for the school; or

19 (3) receive compensation for providing applied
20 behavior analysis services, other than the compensation that the
21 person receives from the person's school employer.

22 Sec. 506.059. PERSONS WHO DO NOT PROVIDE DIRECT SERVICES.

23 (a) This chapter does not apply to a person who:

24 (1) is a behavior analyst who practices with
25 nonhumans, including an applied animal behaviorist or an animal
26 trainer;

27 (2) teaches behavior analysis or conducts behavior

1 analytic research if the teaching or research activities do not
2 involve the delivery or supervision of applied behavior analysis
3 services; or

4 (3) is a professional who provides general applied
5 behavior analysis services to organizations if those services:

6 (A) are for the benefit of the organization; and

7 (B) do not involve direct services to
8 individuals.

9 (b) A person described by Subsection (a) may use the title
10 "behavior analyst."

11 SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

12 Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) The advisory
13 board is composed of nine members appointed by the presiding
14 officer of the commission with the approval of the commission as
15 follows:

16 (1) four licensed behavior analysts, at least one of
17 whom must be certified as a Board Certified Behavior
18 Analyst--Doctoral or hold an equivalent certification issued by the
19 certifying entity;

20 (2) one licensed assistant behavior analyst;

21 (3) one physician who has experience providing mental
22 health or behavioral health services; and

23 (4) three members who represent the public and who are
24 either former recipients of applied behavior analysis services or
25 the parent or guardian of a current or former recipient of applied
26 behavior analysis services.

27 (b) To be qualified for appointment under Subsection

1 (a)(1), a person must have at least five years of experience as a
2 licensed behavior analyst after being certified by the certifying
3 entity.

4 (c) Appointments to the advisory board shall be made without
5 regard to the race, color, disability, sex, religion, age, or
6 national origin of the appointee.

7 Sec. 506.102. DUTIES OF ADVISORY BOARD. The advisory board
8 shall provide advice and recommendations to the department on
9 technical matters relevant to the administration of this chapter.

10 Sec. 506.103. TERMS; VACANCY. (a) Members of the advisory
11 board serve staggered six-year terms, with the terms of three
12 members expiring February 1 of each odd-numbered year.

13 (b) A member may not serve more than two consecutive
14 six-year terms.

15 (c) If a vacancy occurs during a member's term, the
16 presiding officer of the commission, with the commission's
17 approval, shall appoint a replacement who meets the qualifications
18 for the vacant position to serve for the remainder of the term.

19 Sec. 506.104. PRESIDING OFFICER. The presiding officer of
20 the commission shall designate a member of the advisory board to
21 serve as the presiding officer of the advisory board for a term of
22 one year. The presiding officer of the advisory board may vote on
23 any matter before the advisory board.

24 Sec. 506.105. MEETINGS. The advisory board shall meet at
25 least twice each year and at the call of the presiding officer of
26 the commission or the executive director.

27 Sec. 506.106. GROUNDS FOR REMOVAL. A member of the advisory

1 board may be removed as provided by Section 51.209.

2 Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A member
3 of the advisory board may not receive compensation for service on
4 the advisory board.

5 (b) A member of the advisory board is entitled to
6 reimbursement for actual and necessary expenses incurred in
7 performing functions as a member of the advisory board, subject to
8 any applicable limitation on reimbursement provided by the General
9 Appropriations Act.

10 SUBCHAPTER D. POWERS AND DUTIES

11 Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The
12 commission shall adopt rules consistent with this chapter for the
13 administration and enforcement of this chapter.

14 (b) The department shall:

15 (1) administer and enforce this chapter;

16 (2) evaluate the qualifications of license
17 applicants;

18 (3) provide for the examination of license applicants;

19 (4) issue licenses;

20 (5) in connection with a hearing under this chapter,
21 issue subpoenas, examine witnesses, and administer oaths under the
22 laws of this state; and

23 (6) investigate persons engaging in practices that
24 violate this chapter.

25 (c) The commission or executive director may deny, revoke,
26 or suspend a license or may otherwise discipline a license holder in
27 accordance with Section 51.353.

1 Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. The
2 commission shall adopt rules under this chapter that establish
3 standards of ethical practice.

4 Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department,
5 in accordance with Section 51.252, shall provide reasonable
6 assistance to a person who wishes to file a complaint with the
7 department regarding a person or activity regulated under this
8 chapter.

9 Sec. 506.154. FEES. The commission by rule shall set fees
10 in amounts reasonable and necessary to cover the costs of
11 administering this chapter.

12 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

13 AND COMPLAINT PROCEDURES

14 Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. The
15 department shall list with its regular telephone number any
16 toll-free telephone number established under other state law that
17 may be called to present a complaint about a health professional.

18 Sec. 506.202. CONFIDENTIALITY OF COMPLAINT INFORMATION.

19 (a) Except as provided by Subsection (b), a complaint and
20 investigation concerning a license holder and all information and
21 materials compiled by the department in connection with the
22 complaint and investigation are not subject to:

23 (1) disclosure under Chapter 552, Government Code; or
24 (2) disclosure, discovery, subpoena, or other means of
25 legal compulsion for release of information to any person.

26 (b) A complaint or investigation subject to Subsection (a)
27 and all information and materials compiled by the department in

1 connection with the complaint, in accordance with Chapter 611,
2 Health and Safety Code, may be disclosed to:

3 (1) the department and its employees or agents
4 involved in license holder discipline;

5 (2) a party to a disciplinary action against the
6 license holder or that party's designated representative;

7 (3) a law enforcement agency if required by law;

8 (4) a governmental agency if:

9 (A) the disclosure is required or permitted by
10 law; and

11 (B) the agency obtaining the disclosure protects
12 the identity of any patient whose records are examined; or

13 (5) the legislature.

14 (c) The department shall protect the identity of any patient
15 whose records are examined in connection with a disciplinary
16 investigation or proceeding against a license holder, except:

17 (1) a patient who initiates the disciplinary action;
18 or

19 (2) a patient who has submitted a written consent to
20 release the records.

21 SUBCHAPTER F. LICENSE REQUIREMENTS

22 Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by
23 Subchapter B, a person may not engage in the practice of applied
24 behavior analysis unless the person holds a license under this
25 chapter.

26 (b) A person may not use the title "licensed behavior
27 analyst" or "licensed assistant behavior analyst," as appropriate,

1 unless the person is licensed under this chapter.

2 (c) Except as provided by Subchapter B, a person may not use
3 the title "behavior analyst" unless the person is licensed under
4 this chapter.

5 Sec. 506.252. LICENSE APPLICATION. Each applicant for a
6 license under this chapter must submit an application and the
7 required fees to the department. The application must include
8 sufficient evidence, as defined by commission rules, that the
9 applicant has successfully completed a state-approved criminal
10 background check.

11 Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST.
12 An applicant for a license as a licensed behavior analyst must
13 present evidence to the department that the applicant:

14 (1) is currently certified by the certifying entity as
15 a Board Certified Behavior Analyst or a Board Certified Behavior
16 Analyst--Doctoral or an equivalent certification issued by the
17 certifying entity;

18 (2) has met the educational requirements of the Board
19 Certified Behavior Analyst standard or the Board Certified Behavior
20 Analyst--Doctoral standard or an equivalent standard adopted by the
21 certifying entity;

22 (3) has passed the Board Certified Behavior Analyst
23 examination, or an equivalent examination offered by the certifying
24 entity, in applied behavior analysis;

25 (4) is in compliance with all professional, ethical,
26 and disciplinary standards established by the certifying entity;
27 and

1 (5) is not subject to any disciplinary action by the
2 certifying entity.

3 Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR
4 ANALYST. An applicant for a license as a licensed assistant
5 behavior analyst must present evidence to the department that the
6 applicant:

7 (1) is currently certified by the certifying entity as
8 a Board Certified Assistant Behavior Analyst or an equivalent
9 certification issued by the certifying entity;

10 (2) has met the educational requirements of the Board
11 Certified Assistant Behavior Analyst standard or an equivalent
12 standard adopted by the certifying entity;

13 (3) has passed the Board Certified Assistant Behavior
14 Analyst examination, or an equivalent examination offered by the
15 certifying entity, in applied behavior analysis;

16 (4) is in compliance with all professional, ethical,
17 and disciplinary standards established by the certifying entity;

18 (5) is not subject to any disciplinary action by the
19 certifying entity; and

20 (6) is currently supervised by a licensed behavior
21 analyst in accordance with the requirements of the certifying
22 entity.

23 Sec. 506.255. ISSUANCE OF LICENSE. The department shall
24 issue a license as a licensed behavior analyst or a licensed
25 assistant behavior analyst, as appropriate, to an applicant who:

26 (1) complies with the requirements of this chapter;

27 (2) meets any additional requirements the commission

1 establishes by rule; and

2 (3) pays the required fees.

3 Sec. 506.256. RECIPROCITY. (a) The department shall issue
4 a license to a person who is currently licensed as a behavior
5 analyst or as an assistant behavior analyst from another state or
6 jurisdiction that imposes licensure requirements similar to those
7 specified in this chapter.

8 (b) An applicant for a reciprocal license shall:

9 (1) submit evidence to the department that the
10 applicant:

11 (A) is in good standing as determined by the
12 department;

13 (B) holds a valid license from another state or
14 jurisdiction; and

15 (C) is in compliance with other requirements
16 established by Section 506.252, 506.253, 506.254, or 506.255, as
17 appropriate; and

18 (2) pay the required fees.

19 Sec. 506.257. RETIREMENT STATUS. The commission by rule
20 may adopt a system for placing a person licensed under this chapter
21 on retirement status.

22 SUBCHAPTER G. LICENSE RENEWAL

23 Sec. 506.301. LICENSE EXPIRATION. A license issued under
24 this chapter expires on the second anniversary of the date of
25 issuance.

26 Sec. 506.302. LICENSE RENEWAL. Before the expiration of a
27 license, a license may be renewed by:

1 (1) submitting an application for renewal;

2 (2) paying the renewal fee imposed by the commission;

3 and

4 (3) providing verification to the department of
5 continued certification by the certifying entity, which signifies
6 that the applicant for renewal has met any continuing education
7 requirements established by the certifying entity.

8 SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

9 Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
10 ACTION. After a hearing, the commission or executive director may
11 deny a license to an applicant, suspend or revoke a person's
12 license, or place on probation a license holder if the applicant or
13 license holder:

14 (1) violates this chapter, a commission rule, or an
15 order of the commission or the executive director;

16 (2) obtains a license by means of fraud,
17 misrepresentation, or concealment of a material fact;

18 (3) sells, barter, or offers to sell or barter a
19 license; or

20 (4) engages in unprofessional conduct that:

21 (A) endangers or is likely to endanger the
22 health, welfare, or safety of the public as defined by commission
23 rule; or

24 (B) violates the code of ethics adopted and
25 published by the commission.

26 SUBCHAPTER I. ENFORCEMENT PROCEDURES

27 Sec. 506.401. ENFORCEMENT PROCEEDINGS. The commission,

1 department, or executive director may enforce this chapter, a rule
2 adopted under this chapter, or an order of the commission or
3 executive director as provided by Subchapters F and G, Chapter 51.

4 SECTION 3. (a) As soon as practicable after the effective
5 date of this Act, the presiding officer of the Texas Commission of
6 Licensing and Regulation shall appoint nine members to the Behavior
7 Analyst Advisory Board in accordance with Chapter 506, Occupations
8 Code, as added by this Act. In making the initial appointments, the
9 presiding officer of the commission shall designate three members
10 for terms expiring February 1, 2019, three members for terms
11 expiring February 1, 2021, and three members for terms expiring
12 February 1, 2023.

13 (b) Notwithstanding Section 506.101, Occupations Code, as
14 added by this Act, a person who meets the requirements of Section
15 506.253 or 506.254, Occupations Code, as added by this Act, may be
16 appointed as an initial behavior analyst or assistant behavior
17 analyst member of the Behavior Analyst Advisory Board, as
18 applicable, regardless of whether the person holds a license issued
19 under Chapter 506, Occupations Code, as added by this Act.

20 SECTION 4. Not later than April 1, 2018, the Texas
21 Commission of Licensing and Regulation shall adopt the rules,
22 procedures, and fees necessary to administer Chapter 506,
23 Occupations Code, as added by this Act.

24 SECTION 5. Notwithstanding Chapter 506, Occupations Code,
25 as added by this Act, a behavior analyst or assistant behavior
26 analyst is not required to hold a license under that chapter to
27 practice as a licensed behavior analyst or licensed assistant

1 behavior analyst in this state before September 1, 2018.

2 SECTION 6. (a) Except as provided by Subsection (b) of
3 this section, this Act takes effect September 1, 2017.

4 (b) Section 506.251, Occupations Code, and Subchapter I,
5 Chapter 506, Occupations Code, as added by this Act, take effect
6 September 1, 2018.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 589 passed the Senate on
May 1, 2017, by the following vote: Yeas 25, Nays 6; and that the
Senate concurred in House amendment on May 25, 2017, by the
following vote: Yeas 25, Nays 6.

Secretary of the Senate

I hereby certify that S.B. No. 589 passed the House, with
amendment, on May 23, 2017, by the following vote: Yeas 121,
Nays 25, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor